No. 66

In the Supreme Court of the United States

OCTOBER TERM, 1945

LOUIS DABNEY SMITH, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The opinion of the circuit court of appeals (R. 56–63) is reported at 148 F. 2d 288.

JURISDICTION

The judgment of the circuit court of appeals was entered April 4, 1945 (R. 64). The petition for a writ of certiorari was filed April 25, 1945 and was granted May 28, 1945 (R. 67). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules

XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether the evidence is sufficient to sustain petitioner's conviction for failing to report for induction as directed by his local board.

2. Whether petitioner's claim in the trial court that his local board denied him classification as a minister because of prejudice against Jehovah's Witnesses is sufficient to present the question of the propriety of his final classification, which was made by the Director of Selective Service, acting for the President.

3. If so, whether petitioner was entitled to challenge the propriety of his selective service classification in his criminal trial.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Selective Training and Service Act of 1940, as amended, are set forth in Appendix A, *infra*, pp. 57–60. The Selective Service Regulations and the Army Regulations, are set forth, in pertinent part, in Appendix B, *infra*, pp. 61–91.

STATEMENT

In November, 1944, petitioner was indicted in the United States District Court for the Eastern District of South Carolina for violation of the Selective Training and Service Act of 1940. The

indictment (R. 2–3) [1] alleged that on September 30, 1943, petitioner knowingly and willfully failed to perform a duty required of him under the Act and the Selective Service Regulations in that he refused to report for induction as ordered by his local board. At his jury trial, petitioner sought to challenge the classification given him by his local board, but the court excluded the proferred evidence (R. 9–11; see *infra*, p. 29) and instructed the jury that petitioner's classification was not in issue (R. 33). He was convicted (R. 41) and was sentenced to imprisonment for three years and six months (R. 1).[2] Upon appeal to the Circuit Court of Appeals for the Fourth Circuit, the judgment was affirmed (R. 56–64).

The facts may be summarized as follows:

It appears from the findings of the court in *Smith* v. *Richart*, 53 F. Supp. 582 (E. D. S. C.), a habeas corpus case involving petitioner, that he

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[1] For convenience, we shall refer to the printed transcript of record, which consists of the appendices to the briefs of the parties in the circuit court of appeals and the proceedings in that court, as "R." and to the typewritten transcript of the evidence at the trial as "Tr."

[2] This sentence is subject to the special parole provisions contained in Section 10 (a) (6) of the Selective Training and Service Act (50 U. S. C. App. 310 (a) (6)) and Executive Order 8641 (6 Fed. Reg. 563), pursuant to which the Attorney General is authorized to parole any person convicted for violation of the Act to the armed forces, to a Civilian Public Service Camp, or for special service work established by the Attorney General.

is a member of the sect known as Jehovah's Witnesses. He registered with his local board, and on January 29, 1943, he filed his questionnaire with the board, claiming exemption from all military service on the ground that he was a conscientious objector and a minister of religion.[3] "In his questionnaire he stated that he was eighteen years old; that he was a student at the University of South Carolina, majoring in Engineering, preparing for a B. S. degree, and intended to take an examination for a license in Engineering. He also stated that he was not a student preparing for the ministry in a theological or divinity school; that he had been a minister of Jehovah's Witnesses since September, 1938; that he had been formally ordained scripturally as shown by certain verses in Luke, John and Isaiah. He was living with his father, had always received his support, maintenance and education from his father, and no steps had been taken to remove the disability of minority, or to emancipate him from parental custody and control.

"On April 2, 1943, the Local Draft Board placed him in 1-A. The classification was appealed to the Board of Appeal on May 25, 1943, and was affirmed. On June 22, 1943, he appealed from the decision of the Board of Appeal to the President of the United States. His classification was again affirmed." See 53 F. Supp. 583–584.

[3] His conscientious objector claim was later withdrawn (see Gov. Ex. 1).

On September 18, 1943, petitioner was ordered by his local board to report for induction (R. 6). The order (R. 43–44) directed petitioner to report to his local board at Columbia, South Carolina, at 8:30 A. M. on September 30, 1943, and it recited that the local board would furnish transportation to an induction station, where petitioner would be examined and, if accepted, inducted. Petitioner testified that he received the order and that he had no intention of complying with it (R. 20; 48). His father, who is not a Jehovah's Witness (Tr. 50), knew that he intended to disobey the induction order, and so he hired a local magistrate and two deputies to take petitioner to the induction station on September 30, 1943 (R. 21–23).

On the morning of September 30, the day on which he was to report for induction, it was petitioner's admitted intention to disobey the induction order and, instead, to surrender himself to the United States Commissioner (R. 20, 48). The evidence as to time is conflicting, but at some time between 8:00 and 9:00 o'clock that morning (see R. 13, 21, 50–51; *infra* p. 22) petitioner was in his home, which is about two miles from the office of his local board (Tr. 43), when the three officers hired by his father appeared and compelled him to accompany them to the induction station at Fort Jackson (R. 11–12). The officers surrendered him to a sergeant at the induction station, to whom petitioner immediately stated that

he was a minister of the gospel, that because his local board was prejudiced against him, the board refused to classify him as a minister, and that "I was not to be inducted into the Army" (R. 13). The sergeant ascertained from petitioner's local board that he was supposed to be inducted that day, and he directed petitioner to await the arrival of other registrants from his board (R. 13–14). When they arrived, the roll was called and petitioner answered "present" when his name was reached (R. 14). He underwent a physical examination, together with the other registrants (R. 14–15), after which he was asked to state his preference as between service in the Army and the Navy (R. 15). Petitioner testified that "I replied that I chose neither, that I was a minister of the Gospel, and I was exempted from military service" (R. 15); "I explained that I was brought out there against my will, and I explained that I was a minister and could not be inducted into the Army" (R. 15). Following this, petitioner was fingerprinted and questioned concerning his home, name, family, and occupation (R. 15), and was then taken, with the other registrants, to another building for the induction ceremony (R. 16). In compliance with the instructions of the sergeant in charge that anyone who did not want to take the oath should raise his hand and step aside, petitioner indicated that he desired not to take the oath, and he stepped aside from the other regis-

trants (R. 16). Petitioner was told that regardless of whether he subscribed to the oath, he was in the Army, and after the Articles of War had been read, the entire group was granted leave for twenty-one days (R. 17). Petitioner reported back when his leave expired, and he explained to the officer in charge at the reception center "that I was a minister of the gospel and, according to the Draft Law ministers of the Gospel were exempted from military service, and I knew that members of the Local Board were prejudiced against witnesses of Jehovah" (R. 18). Thereafter petitioner steadfastly declined to wear the uniform of a soldier, as a result of which he was court-martialed and sentenced to imprisonment for twenty-five years (R. 18–19).

On December 9, 1943, prior to the court-martial trial, a petition for a writ of habeas corpus was filed in the United States District Court for the Eastern District of South Carolina, seeking petitioner's release from the Army on the ground that he had been forcibly inducted over his objection and that, as a Jehovah's Witness, he was a minister of religion and had been arbitrarily denied exemption as such by his local board. The writ issued, a hearing was had, and the court thereafter entered an order denying the petition. The court found that pettioner's classification was not invalid for any reason and that he was properly inducted into the Army. Petitioner appealed to

the Circuit Court of Appeals for the Fourth Circuit, and, while that appeal was pending, this Court rendered its decision in *Billings* v. *Truesdell*, 321 U. S. 542. In conformity with that decision, the respondent consented to reversal of the judgment of the district court because petitioner had not undergone the induction ceremony (*infra*, pp. 93–94), and petitioner was thereafter released from military custody. (*Smith* v. *Richart*, 53 F. Supp. 582; see R. 19.)

SUMMARY OF ARGUMENT

I

The order to report for induction which petitioner received included a command that he submit to induction. *Billings* v. *Truesdell*, 321 U. S. 542, 557. The conceded fact that petitioner knowingly refused to submit to induction thus established that, as charged in the indictment, he failed to perform a duty required of him by the Selective Training and Service Act and the Selective Service Regulations. But petitioner did more than fail to submit to induction. He neither reported to the local board nor to the induction station. Since it is undisputed that petitioner never intended to report to his local board, and since the intervening coercion practiced by the

three men hired by his father was not directed to preventing him from complying with the induction order, the defense of compulsion is inapplicable. While petitioner found himself at the induction center, it cannot be said that he complied with the order of his board by reporting there. For he was forcibly brought there against his will; he did not present himself for induction as the induction order contemplated; and after being brought there his refusal to be inducted persisted.

II

Petitioner's I-A classification was made *de novo* on his appeal to the President. Thus, to establish the impropriety of the classification, assuming that this defense was open to him in his criminal trial, he bore the burden of showing that the Director of Selective Service, acting for the President, acted otherwise than according to law in classifying him. But he tendered no such evidence. Rather, it appears that he sought to show at his trial that his local board was prejudiced against Jehovah's Witnesses and that it therefore denied him classification as a minister of religion. In the circumstances, this evidence was immaterial and the trial court properly excluded it. *Bowles* v. *United States*, 319 U. S. 33.

III

Petitioner was not entitled to assert as a defense to a prosecution for failure to comply with an order to report for induction that his classification was improper. The court below properly held that the case was governed by *Falbo* v. *United States*, 320 U. S. 549. Petitioner's argument that the cases differ in that he had reached the point in the selective service procedure where his acceptability to the Army had been ascertained, while Falbo withdrew from the process at an earlier point, may be conceded, but the distinction, we submit, does not demand the application of a different rule in this case. In both cases the selective service procedure was disrupted before the defendant had fully complied with the induction order of his local board. Petitioner was obliged unfailingly to obey his induction order. After induction, he would have been free to test the legality of his classification by resorting to habeas corpus, without either the time-consuming delays of a criminal proceeding or the prospect of serving a prison sentence instead of serving in the armed forces if he failed to prove that the order was unlawful.

ARGUMENT

The Selective Service Procedure Involved.—The Selective Service procedure in force when

petitioner was classified and ordered to report for induction is as follows:[4]

The procedure begins with registration, and induction marks its end. The initial step after registration is the registrant's receipt (if he is between the ages of 18 and 45), filling out, and return to the local board of the questionnaire. The registrant is entitled to present all written information which he believes necessary to assist the local board in determining his classification; this information is to be included in or attached to the questionnaire. (Reg. 621.4.)

Upon receipt of the questionnaire, the local board proceeds to classify the registrant solely upon the basis of the written information in his file (Reg. 623.1, 623.2). Unless placed in certain deferred classes, the registrant is then physically examined by local board examining physicians (Reg. 623.31).[5] Thereafter, the registrant receives a notice of the classification by the local board (Reg. 623.61). Upon receipt of such notice, the registrant may, upon written request within

[4] The procedure as it existed when petitioner was ordered to report for induction was in all material respects the same as that which was involved in *Falbo* v. *United States*, 320 U. S. 549.

[5] In January 1944, the selective service procedure was changed to provide instead, for a preinduction physical examination at the induction station. See *Billings* v. *Truesdell*, 321 U. S. 542, 554–555.

ten days, ask for an appearance before the local board (Reg. 625.1). If request is made, time for appeal is stayed (Reg. 625.2 (e)), and the local board must send a notice of time and place for the appearance, at which the registrant may submit such additional information and make such additional presentation as he wishes. All such information must be reduced to writing and placed in the registrant's file (Reg. 625.2).

If the registrant's requested classification is denied, he may appeal (Reg. 625.2 (e), 627.2 (a)). In addition, the Director of Selective Service, the State Director of Selective Service, or the government appeal agent may also appeal from the local board determination (Reg. 627.1 (a), 627.2 (a)). The appeal results in a *de novo* consideration by the appeal board. Appeal is taken by filing a written notice, or by signing the "Appeal to Board of Appeal" upon the questionnaire (Reg. 627.11); the registrant may attach to his appeal a statement of the respects in which he believes the local board erred, may direct attention to any information in his file which he believes the local board failed to consider or give sufficient weight, and may set out in full any information which was offered to the local board and which that board failed or refused to include in his file (Reg. 627.12). If the information is not sufficient to enable the appeal board to determine the registrant's classification, the file is

returned to the local board with proper instructions (Reg. 627.23). Before transmitting the file to the appeal board the local board must first summarize in writing all unwritten evidence which was before it and in doing so it "should be careful to avoid the expression of any opinion concerning information in the registrant's file and should refrain from including any argument in support of its decision" (Reg. 627.13 (a)). The taking of appeal automatically stays induction (Reg. 627.41).

The appeal board then makes its classification and returns the case to the local board (Reg. 627.26, 627.27), which notifies the registrant of the appeal board's action (Reg. 627.31). The decision of the appeal board may, however, be subject to further appeal upon certain conditions. Appeals as of right to the President may be taken by the registrant in any case where he is classified as available for military service (I-A) or as a conscientious objector (I-A-O or IV-E) and one or more members of the board of appeal dissented from the classification (Reg. 628). In addition, in any other case, the State Director of Selective Service or the Director of Selective Service may appeal, if either "deems it to be in the national interest or necessary to avoid an injustice" (Reg. 628.1). If such appeal is taken, the registrant is notified; he is also notified of the President's decision (Reg 628.4 (a), 628.6). Appeal to the President stays induction (Reg. 628.7).

If the registrant is classified I-A, and his order number is reached, he is sent an Order to Report for Induction (Reg. 633.1). Section 3 (a) of the Act, however, expressly provides that—

> * * * no man shall be inducted for training and service under this Act unless and until he is acceptable to the land or naval forces for such training and service and his physical and mental fitness for such training and service has been satisfactorily determined: * * *

Accordingly, the registrant is, upon reporting at the induction station, subjected to a final physical and mental examination. Only the selected men who are found acceptable in the examination are enabled to undergo the induction ceremony (Reg. 633.9). Inducted men who so desire are given an opportunity to return home for three weeks to arrange their affairs. Registrants who have been rejected are informed of the reason for their rejection and furnished transportation to their local board. (Army Reg. 615–500, sec. II, par. 13 (e)–(g) and par. 16 (a)–(c).) Upon receiving notice that a registrant has been found acceptable and has been inducted, the local board places him in class I-C; if he is not accepted because of unfitness, he is placed in IV-F (Reg. 633.13; see Reg. 633.10 (c)). It is not until after this step is taken that the Selective Service classification is complete.

The Issues Presented.—Petitioner's contentions in the trial court were twofold. Principally, he urged that he had no duty under the Selective Training and Service Act, because the induction order was founded on an arbitrary classification by his local board denying him exemption from service under the Act as a minister of religion. His effort to adduce proof calculated to show that he was a minister of religion was rejected by the court and, as a result, his main contention in the circuit court of appeals and in this Court is that, in defense of the allegations of the indictment, he was entitled to show that he had been improperly classified. Petitioner also urged in the trial court, as he does on appeal, that he did not, in fact, fail to comply with the induction order of his local board because the compulsion exercised over him by the local police, acting at his father's behest, excused his failure to report to his local board and, in any event, because he substantially complied with the board's order when the police brought him to the induction station to which he would have been sent if he had reported to his local board. Thus, stated broadly and in inverse order to that just indicated, the issues posed by petitioner are (1) the sufficiency of the evidence to show that he unlawfully failed to report for induction and (2) the correctness of the trial judge's ruling that a selective service registrant may not challenge the propriety of his Selective

Service classification in his criminal trial for failing to comply with an induction order.

I

THE EVIDENCE AMPLY DEMONSTRATES THAT PETITIONER KNOWINGLY FAILED TO PERFORM A DUTY REQUIRED OF HIM BY THE SELECTIVE TRAINING AND SERVICE ACT AND THE SELECTIVE SERVICE REGULATIONS

The penal sanctions provided in Section 11 of the Selective Training and Service Act extend to any person "who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or the rules or regulations made pursuant to this Act" (*infra*, pp. 59–60). In the words of the statute, petitioner was indicted for knowingly failing to perform a duty, in that he failed to report for induction as ordered by his local board. It was established at the trial, *inter alia*, that petitioner previously had secured his release from military custody on the ground that he had refused to undergo the induction ceremony and, further, petitioner testified that he refused to submit to induction. The burden of petitioner's argument is that this evidence does not support the allegations of the indictment. He argues that the only wrongful act alleged in the indictment was his failure to present himself to his local board at the time fixed in the induction order and that the Government's case was inadequate in this respect. In the view we

take of this aspect of the case, to report for induction means to report for the purpose of performing those duties required of prospective inductees, including submission to induction, and one who is physically present but refuses to perform such duties is just as much a violator of his induction order as one who fails to report at all. In this phase of the argument, we shall discuss first the considerations in support of our construction of the nature of the order to report for induction, and secondly we shall show that even if a narrower construction is adopted the evidence was sufficient to support the verdict of the jury.

A. We are supported by the Selective Service Regulations and by the judicial construction of them in the view that an order to report for induction requires more than that the registrant shall merely present himself to his local board at the time fixed in the induction order. The order to report for induction which was sent to petitioner (R. 43–44) and which is a part of the Selective Service Regulations (*infra*, p. 61), advised him that he had been selected for military training and service, that he was to report to the local board, that the local board would furnish transportation to an induction station, and that "you will there be examined, and, if accepted for training and service, you will then be inducted into the land or naval forces." From its terms, it is plain that the order contemplated

more than that petitioner should report to the office of his local board; its obvious purpose was to complete the last phase of the selective service procedure, by which a registrant may be made a part of the armed forces (see R. 26–27). This is implicit in this Court's characterization of the order to report for induction or for work of national importance as an order directing the registrant to report for the last step in the selective process (*Falbo* v. *United States*, 320 U. S. 549, 554). And it is the view which this Court took in *Billings* v. *Truesdell*, 321 U. S. 542, 557, when it had occasion to consider whether a refusal to submit to induction was a violation of the Act. In holding that it was, the Court pointed out that—

> The order of the local board to report for induction includes a command to submit to induction.

As the Court noted, until recently that command was implicit in the order to report, but it is now explicit (see *infra*, pp. 85–86). Section 633.21 (b) of the regulations provides that in reporting for induction a registrant is obliged:

> (1) to follow the instructions of a member or clerk of a local board as to the manner in which he shall be transported to the location where his induction will be accomplished, (2) to obey the instructions of the leader or assistant leaders appointed for the group being forwarded for induction,

(3) *to appear at the place where his induction will be accomplished,* (4) *to obey the orders of the representatives of the armed forces while at the place where his induction will be accomplished,* (5) *to submit to induction,* and (6) if he is not accepted by the armed forces, to follow the instructions of the representatives of the armed forces as to the manner in which he will be transported on his return trip to the local board. [Italics added.]

And Section 633.22 makes clear the fact that a registrant who reports to his local board has reported only for delivery to the induction station and that to fulfill his obligations it still remains for him to report at the place of induction and, if he is accepted, to submit to induction.

Our position likewise finds support in *United States* v. *Collura,* 139 F. 2d 345 (C. C. A. 2), cited apparently with approval in the *Billings* decision (321 U. S. at 547, 557), in which the defendant was convicted under an indictment identical in its allegations with the indictment in this case. The proof showed that in response to an induction order of his local board, the defendant appeared at the induction station, but declined to submit to induction unless he was given a guarantee against compulsory vaccination after he was in the Army. The circuit court of appeals had no doubt that the proof supported the in-

dictment. It said, "Obviously the duty to report for induction means more than putting in an appearance at the induction station. The selectee must not only appear but must be ready to go through the process which constitutes induction into the army." And compare *United States* v. *Longo*, 140 F. 2d 848 (C. C. A. 3), in which it was held that a registrant who was directed to report for a preinduction physical examination and who reported to the local board and informed the board that he refused to undergo the examination had not complied with the order to report. To the same effect, see *Edwards* v. *United States*, 145 F. 2d 678 (C. C. A. 9).

Admittedly, petitioner never intended to comply with the induction order of his local board. Even after he was brought to the induction station against his will, he persisted in his position that he would not be inducted, to the extent of declining to express a choice as between service in the Army or Navy. There is no question in the case that he did not submit to induction. In these circumstances, we think it clear that he knowingly failed to perform a duty required of him by the Selective Training and Service Act and the Selective Service Regulations, as charged in the indictment, and, therefore, that the court properly denied petitioner's motion for a directed verdict (R. 27–28).

B. Petitioner is in no stronger position even if it be assumed that an order to report for induc-

tion requires only that the registrant shall report to the local board at the time specified in the induction order. For it is undisputed that he did not report to his local board at 8:30 A. M. on September 30, 1943, as he was directed by the induction order. At the trial, petitioner took the position that this neglect of duty was caused by the compulsion exercised over him by the local police and that his failure to report was therefore excusable under the doctrine that coercion which induces a well-grounded apprehension of death or serious bodily injury will excuse the commission of a criminal act. See *Respublica* v. *McCarty*, 2 Dall. 86, 87; *Giugni* v. *United States*, 127 F. 2d 786, 791 (C. C. A. 1); *Shannon* v. *United States*, 76 F. 2d 490, 493 (C. C. A. 10). The trial court agreed that if an intervening force beyond petitioner's control prevented him from doing what was required of him, that would be a good defense, and it so instructed the jury (R. 31–32). We believe that the facts of this case are such that no jury could have found that the coercion practiced on petitioner bore any causative relation to his failure to report for induction.

Petitioner testified (R. 20, 47–48) that he knew he was required to report to his local board at 8:30 A. M., on September 30, 1943, and that on that day it was his intention not to report to his local board, and, instead, to present himself to the United States Commissioner. Accordingly, at a time between 8:00 and 9:00 A. M., the exact time

not being clear,[6] petitioner was in his home shaving when the three men hired by his father came to his home and told him to accompany them to Fort Jackson, the induction station. There is no evidence that petitioner informed these men that he was supposed to be at his local board or that he wanted to go to the board's office. Likewise, there is no evidence that petitioner had made any plans or arrangements for reporting to the local board. In these circumstances, especially in view of petitioner's unqualified testimony that he did not intend to report and in the absence of any facts showing a last-minute change of intention, there is no basis for concluding that petitioner was prevented from reporting for induction by the coercion practiced upon him by the three men.

[6] Petitioner testified on direct examination that at a time between 8:30 and 9:00 A. M. (R. 13) he was brought to Fort Jackson from his home which was six or seven miles away (Tr. 43). On cross-examination, he testified that he understood that he was required to report to his local board at 8:30 and that "they called at 9:00 o'clock" (R. 20). Thereafter, petitioner testified, "I am not definite on the exact time, but I knew it was around 8:15 or 8:30, between 8:00 and 8:30. I could not tell you the exact time" (R. 50–51). In response to an inquiry whether he had told an F. B. I. agent in an interview that it was after 8:30 that the men came to his home petitioner testified, "I don't remember whether it was or not." "I do not remember what I told him, but it was prior to the time to report for induction. How much, I don't know." (R. 21, 51.) Following the close examination of petitioner concerning the time when the men came to his home, his parents both testified that the men came to their home at 8:00 A. M. (R. 21, 24).

Since petitioner had no intention to report, the compulsion obviously did not prevent him from performing his duty. Its only effect was to prevent petitioner from presenting himself to the United States Commissioner, where he intended to go in lieu of reporting for induction. It is, we submit, a perversion of the defense of compulsion to urge, as petitioner does, that the compulsion prevented him from performing an act which he never intended to perform. For, as we view it, the very theory of the doctrine of compulsion is that no criminal liability ensues because the compulsion is the proximate cause of the criminal act. Where, as in this case, there is no showing that, but for the intervening compulsion, the criminal act would not have been committed, the defense of compulsion is without foundation.

We agree with petitioner that if he had reported for induction at the induction station, instead of first reporting to his local board for delivery to the induction station, there would have been substantial compliance with the induction order. But, of course, as petitioner urged in the habeas corpus case, he did not report to the induction station in compliance with the induction order,[1] and, as we have shown, when he was at the

[1] In the habeas corpus proceeding, petitioner argued in his brief in the district court that:

"It was amply proved that he [petitioner] was carried to the induction station under compulsion by three men, at least one of whom was armed. The father of the boy admitted

induction station it was against his will and not for the purpose of induction.

C. Petitioner is mistaken in his contention that the Government's theory in the trial court, and the theory on which the case was submitted to the jury, was that he had failed to report to the local board at 8:30 A. M., on September 30, 1943, and

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that the abduction was 'arranged by him.' There is no question but that he did not go of his own accord.

"He was ordered by the local board to report to the board to be sent to the induction station for induction. He did not report but was carried directly to the induction station by armed men at the instance of his father and delivered to the military authorities.

"That illegal action was jurisdictional and rendered all subsequent proceedings void. The law itself provides in Section 11 of the penalty *for failure to report*, the penalty being, not forcible delivery or induction, but trial in the district court. That is all that can be done. * * *" [Italics added.]

In the circuit court of appeals, petitioner's brief urged that: "'An "inducted man" is a man who has become a member of the land or naval forces through the operation of the Selective Service System. (Selective Service Regulations, sec. 601.7) Louis D. Smith, Jr., did not become a member of the armed forces 'through the operation of the Selective Service System.' *The operation of the System ceased when it issued the order to report for induction and he declined to report.* * * * Section 11 of the Selective Training and Service Act limits the attachment of military law and jurisdiction over a registrant to those persons who voluntarily appear at the induction station. Section 11 has a legislative history which dispels any intention of conferring jurisdiction over any person who did not voluntarily respond to the order to report for induction. *It was the intention of Congress that one who refused to report should be prosecuted only in the United States District Court and that he would not be subject to military jurisdiction.*" [Italics added.]

that the subsequent events at the induction station were regarded as having no bearing on the question whether he reported for induction. It is true that the Government established a prima facie case by showing that petitioner was ordered to report to the board and that he failed to do so. (See R. 6–7, 45.) But in cross-examining the Government's witness and thereafter by his own testimony petitioner attempted to show, as compliance with the induction order, that he had reported to the induction station. (See R. 7, 11–21, 47–49; Tr. 15–16.) To meet this evidence the Government established by cross examination of petitioner that he never intended to report for induction, and that at the induction station he made known his refusal to be inducted, he refused to select between service in the army and navy, and he refused to submit to induction. (See R. 20, 47–52.) That both the prosecuting attorney and the trial judge recognized petitioner's attempted defense that he reported for induction at the induction station is plainly evident from one of the incidents at the trial (Tr. 38). In cross-examining petitioner, the Assistant United States Attorney asked him: "After you arrived at the fort did you at any time propose to submit yourself for induction into the United States army or did you do anything——." Petitioner's counsel interrupted the question before it was completed with an objection "on the ground that this wit-

ness is not being charged with refusal to be inducted, but the charge is merely reporting, and it really has no bearing on the issue." In overruling the objection the trial judge stated: "It seems to me that the counsel for the witness or defendant has undertaken to develop a line of testimony upon which they expect to predicate a plea that he has already reported for induction, and, in fact, the counsel has already made that statement in open court, and I think he may be cross-examined along that line."

The colloquy between petitioner's counsel and the trial judge at the close of all the evidence (R. 25–28) likewise demonstrates that the trial judge considered the evidence in respect of the events at the induction station in determining whether there was enough evidence to go to the jury, but that it was his view that, if petitioner reported at all, it was for the purpose of not being inducted rather than for the purpose of induction (R. 27). In charging the jury the court, in effect, told the jury that the Order to Report for Induction defined petitioner's duty (R. 30–31)[8]; and that "In this case the defendant is charged with knowing that he was required by his local board having jurisdiction over him to report at a certain time for induction into the Army and that, with

[8] In the course of the trial the judge stated in response to a question posed by petitioner's counsel as to the purpose of the Order to Report that "As a matter of law it is for the purpose of inducting them into the service" (Tr. 21–22).

knowledge of that requirement and with no intention to perform it, he stayed away and did not do that which was required of him" (R. 31–32; see also R. 28, 30). In respect of petitioner's request to instruct the jury that he was charged with having failed to submit to induction, the court instructed the jury that "He is charged, Gentlemen of the Jury, not with failure to submit to induction in terms but with failing to report for induction. I make that qualification of that Request." (R. 35.) The court then instructed the jury to consider "all of the testimony in this case" (R. 38) and submitted the case to the jury.

The court properly, we think, refused petitioner's Requested Instruction No. 10 (R. 37), that if petitioner was present at the induction station and underwent the prescribed procedure short of submitting to induction he had, as a matter of law, reported for induction. In our view the instruction was defective because it excluded from the jury's consideration the circumstances under which petitioner reached the induction station against his will, and because it excluded from the jury's consideration the element of petitioner's having failed to submit to induction in determining whether petitioner had reported, and, if so, whether he did so for the purpose of induction, as was required by the local board's order.

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II

SINCE PETITIONER WAS FINALLY CLASSIFIED BY THE DIRECTOR OF SELECTIVE SERVICE ON A DE NOVO CONSIDERATION OF HIS CASE, THE PROPRIETY OF THE CLASSIFICATION PREVIOUSLY GIVEN HIM BY HIS LOCAL BOARD WAS IMMATERIAL AT HIS TRIAL. THIS CASE IS IN THE SAME POSTURE AS *BOWLES* v. *UNITED STATES*, 319 U. S. 33

The second branch of the case poses the question whether petitioner was entitled to challenge the correctness of this classification as a defense to the indictment. Even if it be assumed, as petitioner urges, that the defense is available in the criminal trial, we think it clear that the trial court did not err in this case. For petitioner attempted only to challenge the classification as given him by his local board, a challenge which was academic, because petitioner had been finally classified on an appeal to the President.

It appears from the decision in petitioner's habeas corpus case (53 F. Supp. 582) and from his selective service file, which the Court may judicially note (*Bowles* v. *United States*, 319 U. S. 33, 35), that petitioner was first classified I-A by his local board. He appealed from that classification to his board of appeal, which likewise classified him I-A, with one member of the board dissenting. Because of the dissent, petitioner was able further to appeal to the President (Reg. 628.2). On that appeal, he was classified I-A (*infra*, p. 92). This was the final classification

upon which the order to report for induction was predicated. Since it is settled that a classification on appeal to the President is a *de novo* classification which entirely replaces the classification of the board of appeal and the local board (*Bowles* v. *United States*, 319 U. S. 33; *Falbo* v. *United States*, 320 U. S. 549, 555 (concurring opinion)), petitioner could have made his defense, assuming it were open to him, only by showing that the decision on the appeal to the President was not according to law.

But he did not seek to do this. As in the habeas corpus action (see 53 F. Supp. 582, 585), petitioner sought to show at his criminal trial that his local board had improperly classified him. While the record in this respect is cryptic, it is fairly evident that petitioner was attempting to show, as he had in the habeas corpus action, that the local board was prejudiced against Jehovah's Witnesses, and that as a result he was denied classification as a minister (cf. R. 15–16), and it is plain that the trial judge understood that this was petitioner's objective (R. 10). When petitioner took the stand, his counsel immediately questioned him concerning his ministerial status. On the objection of the Government, the trial court inquired of petitioner's counsel whether it was his intention to attack "the rulings of the Draft Board" and counsel replied in the affirmative, at which point the court ruled that petitioner

could not do so in his criminal trial (R. 9). In the colloquy which followed (R. 10–11) the court again said that "you cannot offer testimony to attack the action of the Local Board" and petitioner's counsel responded, "we take this position, that this defendant has complied with all of the ministerial regulations completely under the Billings case and now that he has the right in this case to attack the rulings of the Board as the Supreme Court of the United States said that he did have the right to attack in the Falbo case."

We are mindful of the fact that the trial court probably rejected petitioner's proffered evidence on the theory that he was not, in any event, entitled to challenge his classification in his criminal trial. But irrespective of the reason for the court's rulings, we believe that the court did not err. For, as we have shown, even if the local board classification was improper for any reason, that impropriety was cured by the final classification on the appeal to the President. *Bowles* v. *United States, supra;* Mr. Justice Rutledge concurring in *Falbo* v. *United States, supra.* Petitioner tendered nothing to show that the latter classification was other than according to law.

III

HAVING REFUSED TO SUBMIT TO INDUCTION, PETITIONER WAS NOT ENTITLED TO CHALLENGE THE PROPRIETY OF HIS SELECTIVE SERVICE CLASSIFICATION IN HIS CRIMINAL TRIAL. HABEAS CORPUS AFTER INDUCTION IS THE EXCLUSIVE REMEDY TO TEST THE CONSTITUTIONALITY OF THE INDUCTION ORDER

The facts of this case stand apart from all other reported selective service cases. Their uniqueness stems from the fact that, contrary to petitioner's admitted desire to defy completely the order of his local board, he found himself in a position where, against his protests, he was forcibly brought to the induction station and his acceptability to the armed forces was determined in the same manner as was the acceptability of other registrants from his local board who had reported for induction. While the results of petitioner's physical examination do not appear in the record, it is evident from the fact that he was required to undergo the induction ceremony that he had been found acceptable by the Army, as is required by Section 3 (a) of the Act as a condition precedent to military service. In these circumstances, we shall, for this branch of the argument, treat the case as though petitioner had complied with the induction order, except that he refused to undergo the induction ceremony. Thus, the question presented, assuming that the record properly presents the issue (cf. Point II, *supra*), is whether a registrant may defy the Act and the Selective Service Regulations by refusing to submit to induction

and defend that defiance by challenging the correctness of his Selective Service classification in his criminal trial.

A. Although the question is peculiar to the present Selective Training and Service Act,[9] it is

[9] The question did not arise under the 1917 draft law, since criminal sanctions were not utilized in the last war for failure to report for induction. Rather, under the 1917 Act and regulations, a registrant was considered to be inducted and subject to military law immediately from the time designated for reporting. If he failed to report, he was subject to court martial for desertion. Articles of War, Sec. 2a, 41 Stat. 787, 10 U. S. C. 1473; Selective Service Regulations (1917) Secs. 133, 140; *Franke* v. *Murray*, 248 Fed. 865 (C. C. A. 8); cf. *United States* v. *Bullard*, 290 Fed. 704, 707 (C. C. A. 2), certiorari denied, 262 U. S. 760. Accordingly, the question of available defenses in a criminal proceeding for failing to report for induction was not presented.

But in a habeas corpus proceeding brought by a registrant who had not reported for induction and who was held for desertion, it was ruled that erroneous and, indeed, arbitrary classification did not justify a refusal to report. See *Ex parte Romano*, 251 Fed. 762, 764 (D. Mass.). Under the 1917 Act, the Judge Advocate General repeatedly ruled that a plainly mistaken classification did not void the induction and, accordingly, the registrant was required to apply to the military for discharge. JAG 334.4, June 7, 1918; JAG 327.3, October 30, 1918, November 9, 1918. And an erroneous classification was held no defense in a court martial for desertion arising out of failure to report for induction. See C. M. 122312, Grant (1918) (Section 2238, Digest of Opinions, Judge Advocate General, Volume 1912–1930), in which it was stated—

"* * * While it is true there was no direct evidence that the accused was registered or classified, the order to entrain and proceed to camp is established beyond all doubt. The order imports rightfulness and verity as against any assault in these proceedings." (C. M. 122330, Choroshen; C. M. 114991, Aniki.)

no longer a novel one.[10] Substantially the same question was before the Court in *Bowles* v. *United States,* 319 U. S. 33, but that case was decided on other grounds. Shortly thereafter it was again before the Court in *Falbo* v. *United States,* 320 U. S. 549. We think that the rationale of the decision in that case dictates the answer to petitioner's contention in this case, namely, that petitioner was not entitled to defy with impunity the order of his local board by refusing to submit to induction; the necessity for speedily mobilizing the nation's manpower without litigious inter-

[10] The problem is not presented in Great Britain. Under the British National Service Act, 1939, 2 and 3 Geo. VI, c. 81, judicial review of administrative determinations is not possible since that statute provides, in respect of matters committed to the determination of the various agencies established for its administration, that the decisions of such agencies are final and shall not be called in question in any court of law (Secs. 5 (12), 6 (9), 10 (2)). It may be noted, however, that this statement does not apply to persons claiming to be ministers, for they are not required to register and are not classified administratively (Secs. 2 and 11 (1)). Under the 1916 Acts ministers were required to register (National Registration Act (1915) 5 and 6 Geo. V, c. 60, Sec. 1) but not to serve (Military Service Act (1916) 5 and 6 Geo. V, c. 104, Schedule 1) and were not classified administratively (see Sec. 2 (1)). For this reason, we think that such cases as *Offord* v. *Hiscock*, 86 L. J. K. B. 941, and *Hawkes* v. *Moxey*, 86 L. J. K. B. 1530, relied upon by the dissenting Justice in the *Falbo* case (320 U. S. at p. 560) and by petitioner, are not apposite. As the English courts recognized, those cases presented only the question whether the defendants were within the statutory exception granted ministers; no question of judicial review of administrative action was involved in the cases or discussed by the courts.

ruption requires that he should have completed the last step in the Selective Service procedure by submitting to induction. This would seem to be made plain by the requirement of Section 11 of the Act that duties required by the Act must, without exception, be performed.

As in petitioner's case, Falbo was indicted for knowingly failing to perform a duty required of him under the Act; Falbo wilfully failed to obey his local board's order to report for assignment to work of national importance. His proffered defense was that he had no "duty" to comply with his local board's order, because it was based on an arbitrary classification. Similarly, petitioner sought to defend this prosecution on the ground that he was improperly denied classification as a minister of religion. When the *Falbo* case was argued in this Court the Government showed that the order to report for induction is but an intermediate step in the Selective Service process, and it argued that the intent and scheme of the Selective Training and Service Act required that the order must be obeyed. The argument there made, and which is equally appropriate here, was that if armed forces are effectively to be raised and maintained by conscription, it is of paramount importance that one who is called up respond promptly. The necessities of the situation are such that the nation cannot permit a registrant to flout an order to report because he thinks that his classification is

wrong, thus depriving the Army of a soldier and putting the burden on the Government to seek him out and proceed against him. So, at all events, it must be taken that Congress concluded. In the *Falbo* case, the further argument was made that considerations of due process are given full effect if a remedy is made available after the registrant has submitted to induction. See Brief for the United States, No. 73, 1943 Term, pp. 27–61.

This Court so held. In its opinion the Court did not rely on any doctrine of self-imposed judicial abstinence from interposing judicial relief in the midst of the administrative proceeding; the opinion was predicated on the Court's interpretation of the Congressional intent underlying the Act. The Court recognized that when the Act was enacted "The Congress was faced with the urgent necessity of integrating all the nation's people and forces for national defense. * * * Accordingly the Act was passed to mobilize national manpower with the speed which that necessity and understanding required." (320 U. S. at 551–552.) The Court pointed out that the order to report for induction comes at an intermediate point in the selective process; it comes after the registrant has been classified but before his acceptability to the armed forces has been determined. It is "no more than a necessary intermediate step in a united and continuous

process designed to raise an army speedily and efficiently" (320 U. S. at 553). In order to facilitate the speedy completion of the process, the Court stated, the registrant is obliged to obey the induction order. Laying at rest the same constitutional argument which petitioner here makes, the opinion concluded that "Even if there were, as the petitioner argues, a constitutional requirement that judicial review must be available to test the validity of the decision of the local board, it is certain that Congress was not required to provide for judicial intervention before final acceptance of an individual for national service" (320 U. S. at 554). In answering the question raised by the facts of that case, the Court held that Congress had not authorized judicial review of Falbo's classification in the criminal prosecution (*ibid.*):

> * * * The Act nowhere explicitly provides for such review and we have found nothing in its legislative history which indicates an intention to afford it. The circumstances under which the Act was adopted lend no support to a view which would allow litigious interruption of the process of selection which Congress created. To meet the need which it felt for mobilizing national manpower in the shortest practicable period, Congress established a machinery which it deemed efficient for *inducting* great numbers of men into the

armed forces. Careful provision was made for fair administration of the Act's policies within the framework of the selective service process. *But Congress apparently regarded "a prompt and unhesitating obedience to orders" issued in that process "indispensable to the complete attainment of the object" of national defense. Martin* v. *Mott,* 12 Wheat. 19, 30. *Surely if Congress had intended to authorize interference with that process by intermediate challenges of orders to report, it would have said so.*

Against this background the complete absence of any provision for such challenges in the very section providing for prosecution of violations in the civil courts permits no other inference than that Congress did not intend they could be made. * * * [Italics added.]

To the same effect see, *e. g., United States* v. *Kauten,* 133 F. 2d 703 (C. C. A. 2); *United States* v. *Grieme,* 128 F. 2d 811 (C. C. A. 3); *United States* v. *Sauler,* 139 F. 2d 173 (C. C. A. 7); *Bronemann* v. *United States,* 138 F. 2d 333 (C. C. A. 8); cf. *Giese* v. *United States,* 143 F. 2d 633 (App. D. C.), affirmed by an equally divided court, 323 U. S. 682.

In our view, the *Falbo* decision recognized that Congress had selected between two sharply conflicting interests. On the one hand, there was involved the personal interest of the registrant that

he should be treated according to law by the Selective Service System and that he should not be required to submit himself to military jurisdiction until he had been accorded such treatment. Competing with the interest of the individual was the vital interest of the nation that its manpower should be mobilized for military service with the speed necessary to protect the nation from destruction. The urgency was so great that the mobilization program could brook no delay, including that which would be occasioned by efforts to test the legality of selective service action while the selective service procedure in those cases was still in motion. Recognizing the emergency and that Congress had provided a system carefully designed to insure fair treatment to all registrants, the Court concluded, properly we think, that Congress intended that where an order to report for induction is issued by the board having jurisdiction over the registrant and where the order is valid on its face, it must, without exception, be obeyed. While the Court did not reach the question, we think that the decision implicitly recognized that this does not mean that the individual is without protection from illegal administrative action. Rather, the decision contemplates that after a registrant has submitted to induction and the selective service procedure has thus come to an end, he may have his day in court by resorting to the writ of habeas corpus to test the constitutionality of the administra-

tive action. See Mr. Justice Murphy, dissenting, 320 U. S. at p. 557, fn. 1, 559; Mr. Justice Douglas, concurring in *Hirabayashi* v. *United States*, 320 U. S. 81, 108–109. And see *infra*, pp. 50–56.[11]

Petitioner's disagreement with our view of the controlling authority of the *Falbo* case rests upon two contentions, neither of which, we believe, supports his argument that a registrant may stop short of induction and defend his refusal to proceed further by challenging his selective service classification in his criminal trial.

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[11] This view seems to have had at least tacit acceptance by Congress. In January of this year there was before the House Committee on Military Affairs a proposed amendment of the Selective Training and Service Act to include within it provisions regulating civilian manpower. The amendment provided *inter alia* that in a prosecution for failure to perform a duty under the provisions regulating civilian manpower certain defenses, including the defense that the defendant did not receive fair consideration, should be available. In explaining the reason for this provision the Committee Report (No. 36, 79th Cong., 1st sess., pp. 4–5) stated:

"Under the act as it is now written, registrants who are ordered to submit to induction into the armed forces may not refuse and defend such refusal in a criminal prosecution on the ground that their classifications were not given fair consideration by their boards. In order to obtain a judicial determination of such issues such registrants must first submit to induction and raise the issue by habeas corpus. (See *Ex parte Stanziale* (1943), 3d Cir., 138 F. 2d 312, cert. den., 320 U. S. 797.) Since a habeas corpus proceeding is not available to registrants ordered to accept employment under Section 5 (a), they are in a status different from registrants ordered to submit to induction into the armed forces, and thus are permitted under the bill to raise these issues in the criminal proceeding."

In arguing that he may withdraw from the selective service procedure as soon as he has been found acceptable for military service, petitioner urges that the *Falbo* decision requires a selectee to obey his induction order only until his last remedy under the selective service procedure is exhausted. In his view, once it is finally determined that he will be required to perform military service, he may refuse to proceed further as a means of securing judicial review of his selective service classification. We think the difficulty with petitioner's position is that the *Falbo* decision involves more than an application of the settled rule of judicial self-limitation, that the courts will not test the legality of administrative action until the adminisrative remedies have been exhausted. The decision was predicated on the Court's interpretation of the Congressional intent that there should be no interruption of the mobilization process (see *supra*, pp. 35–37). As the Court pointed out, in order to facilitate the speedy completion of the process of raising an army, Congress required that the registrant obey the induction order, and it evinced its intention that there should be no litigious interruption of the administrative process by failing to provide for intermediate challenges of orders to report for induction. In support of his position, petitioner points to that language in the *Falbo* decision which reads (320 U. S. at 553–554):

> The connected series of steps into the national service which begins with registration with the local board does not end until the registrant is *accepted* by the army, navy, or civilian public service camp. * * * * * * Even if there were, as the petitioner argues, a constitutional requirement that judicial review must be available to test the validity of the decision of the local board, it is certain that Congress was not required to provide for judicial intervention before final *acceptance* of an individual for national service. [Italics added.]

Petitioner urges that this language means that the process ends when it is determined at the induction station that the registrant is acceptable for service and before he undergoes the induction ceremony. But we think it plain that the italicized words refer not to the determination of acceptability but to the registrant's final acceptance into national service, either in the armed forces or in a Civilian Public Service Camp. In its brief in the *Falbo* case (pp. 32, 37, 43, 55) the Government used "acceptance" in that sense and there is nothing in the *Falbo* decision which indicates that the Court used it in any other sense or that it meant "acceptance" to describe anything short of actually being a member of the armed forces or a Civilian Public Service Camp. We are persuasively supported in this view by the parallel which the Court drew between an order to report for induc-

tion and an order to report for work of national importance. Thus, the Court pointed out (320 U. S. at 553) that the selective service process does not end with the completion of the functions of the local boards and appellate agencies, for—

> The selectee may still be rejected at the induction center and the conscientious objector who is opposed to noncombatant duty may be rejected at the civilian public service camp. The connected series of steps into the national service which begins with registration with the local board does not end until the registrant is accepted by the army, navy or civilian public service camp.

Significantly, at the time of the *Falbo* case, a conscientious objector became a member of a civilian public service camp when he passed his physical examination at the camp and was accepted by the camp director.[12] There was no induction ceremony. (Reg. 653.11, *infra*, pp. 87–89.) Acceptance was the point at which the registrant became a member of the camp and was thus the last step in the process. There is no basis for concluding that the Court regarded selectees as being in a different procedural position than conscientious objectors. Accordingly, we think it plain that, while a selectee's acceptability was as-

[12] At the present time, a conscientious objector who reports to a civilian public service camp is accepted regardless of the outcome of his physical examination at the camp. (Reg. 653.11.)

certained prior to the induction ceremony, the Court regarded a selectee as not finally accepted for military service until he underwent the induction ceremony and the selective service procedure came to an end. Cf. *Billings* v. *Truesdell*, 321 U. S. 542, 547–548; see *infra*, pp. 47–50.

Petitioner also urged that the *Billings* decision demonstrates that this Court has not held that a registrant who refuses to submit to induction is foreclosed from challenging his selective service classification in his criminal trial. His argument rests upon the following language of the opinion (321 U. S. at 558):

> Moreover, it should be remembered that he who reports at the induction station is following the procedure outlined in the *Falbo* case for the exhaustion of his administrative remedies. Unless he follows that procedure he may not challenge the legality of his classification in the courts. But we can hardly say that he must report to the military in order to exhaust his administrative remedies and then say that if he does so report he may be forcibly inducted against his will. That would indeed make a trap of the *Falbo* case by subjecting those who reported for completion of the Selective Service process to more severe penalties than those who stayed away in defiance of the board's order to report.

It will be remembered that the *Billings* case, which arose on an application for habeas corpus

challenging the military jurisdiction, did not involve the question of the *Falbo* case. Rather, the principal issue was whether a selectee who refused to submit to induction was subject to civilian or military jurisdiction. The language upon which petitioner relies is found in part III of the Court's opinion, which was addressed to the respondent's contention that Billings was inducted when the oath was read to him and he was told he was in the Army, at a time when he was under guard and was retained against his will. In rejecting this argument, the Court held that Billings had not yet been inducted and that he was therefore subject to punishment by the civilian authorities as a violator of the Selective Training and Service Act. For, the Court said, to accept the respondent's view would be to undermine the congressional policy of fixing the maximum punishment for those who disobey the order of their local board and refuse to be inducted. It is at this point in the opinion that the quoted language relied upon by petitioner appears. We think its import is that if the respondent's argument that a reading of the oath was enough to subject a selectee to military jurisdiction were accepted, then one who, like Billings, reported to the induction station but was unwilling to submit to induction would be placed in a less favorable position than a selectee who failed to report at all. For the former would be subject to the sanctions of the

Articles of War, whose penalties far exceed those described by the Selective Training and Service Act, while the latter would be prosecutable only under the Act.

In any event, we agree with the Circuit Court of Appeals for the Seventh Circuit (*United States* v. *Rinko*, 147 F. 2d 1, certiorari denied, April 30, 1945) in believing that the *Billings* decision was not intended to limit the doctrine of the *Falbo* case,[13] for "it is unreasonable to suppose that the court intended thereby within less than 90 days following the Falbo decision to announce any different procedure than that approved in the Falbo decision—at least not by implication." And we are not alone in this view. The construction of the *Billings* decision urged by petitioner in this case has been argued in the same terms in numerous cases in the lower federal courts and it has been uniformly rejected. In some cases it has been rejected *sub silentio* and

[13] Compare Mr. Justice Douglas concurring in *Hirabayashi* v. *United States*, 320 U. S. 81, 108–109:

"There are other instances in the law where one must obey an order before he can attack as erroneous the classification in which he has been placed. Thus it is commonly held that one who is a conscientious objector has no privilege to defy the Selective Service Act and to refuse or fail to be inducted. He must submit to the law. But that line of authority holds that after induction he may obtain through *habeas corpus* a hearing on the legality of his classification by the draft board. * * * We need go no further here than to deny the individual the right to defy the law. It is sufficient to say that he cannot test in that way the validity of the orders as applied to him."

in others the courts, like the court below and the court in the *Rinko* case, have expressly stated views which coincide with the Government's position. See, *e. g., United States* v. *Flakowicz,* 146 F. 2d 874 (C. C. A. 2), certiorari denied, April 30, 1945; *Klopp* v. *United States,* 148 F. 2d 659 (C. C. A. 6); *Sirski* v. *United States,* 145 F. 2d 749 (C. C. A. 1); *United States* v. *Estep,* 150 F. 2d 768 (C. C. A. 3), pending on writ of certiorari, No. 292; cf. *Bagley* v. *United States,* 144 F. 2d 788, 790 (C. C. A. 9).

If we are correct in our analysis of the doctrine of the *Falbo* case, petitioner, of course, was not entitled to challenge his selective service classification in his criminal trial. For this case is of the same pattern as the *Falbo* case and is distinguishable from it only in the fact that Falbo completely defied the order of his local board by failing to report at all, while petitioner reached the point where he was found acceptable by the Army before he refused to submit to induction. Since the order to report for induction includes a command to submit to induction (*Billings* v. *Truesdell,* 321 U. S. 542, 557), it is clear that petitioner defied his induction order just as much as Falbo violated his. In both cases the defendant stopped short of actual induction; and we submit that, like Falbo, petitioner was thus precluded from attacking his classification in his criminal trial.

B. But even if it be assumed, as petitioner urges, that the *Falbo* decision limited itself to the specific facts of the case and that the question presented by this case is still open, every pertinent consideration supports our view that the rule of the *Falbo* case should be extended to the facts of this case. As we have pointed out, *supra*, pp. 35–38, we believe that the *Falbo* decision is predicated upon the proposition that Congress regarded " 'a prompt and unhesitating obedience to orders' issued in that [selective service] process 'indispensible to the complete attainment of the object' of national defense" (320 U. S. at p. 554) and that it therefore did not contemplate interferences with that process by challenges of orders to report. The same reasoning is applicable to the facts of this case. For the process was not yet at an end when petitioner defied his induction order; we believe that the selective service procedure does not end until the selectee is inducted into the armed forces or is accepted at a civilian public service camp. It requires no argument to establish that the object of the Selective Training and Service Act is to increase the personnel of the armed forces and to train them. It seeks to increase the size of the armed forces by a selective system of compulsory military service and, obviously, that objective is achieved only when a selectee becomes subject to military jurisdiction. Until that time he is subject to the procedures

established under the Act and any dereliction in duty is a violation of the Act. Until the selectee complies with the command of his local board that he submit to induction the administrative process is not at an end. *Biron* v. *Collins,* 145 F. 2d 758 (C. C. A. 5); cf. *Edwards* v. *United States,* 145 F. 2d 678, 680 (C. C. A. 9); *United States* v. *Flakowicz, supra.* As the Circuit Court of Appeals for the Third Circuit recently pointed out (*United States* v. *Estep, supra,* pp. 770–771):

> In deciding when the administrative process is completed, it is relevant to keep in mind what all the activity is for. It is not ceremonial ritual, nor was it designed to provide committee activity for citizens of the various communities. It was, and is, designed to provide an Army and a Navy in a time of national emergency. The language of Congress, of the Supreme Court, and of those responsible for the administration of the selective service system, all make this clear.
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> * * * * * *
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> Until a man is actually inducted he remains a civilian and military need is unsatisfied. The *Billings* case, far from being of aid to defendant, only makes it clearer that civilian status remains unchanged until induction actually takes place. So far as achieving what Congress intended is concerned, it makes no difference whether a man refuses to register, or to fill out a questionnaire, to report to local

> board or induction station, or refuses to be inducted. In any event, the end is not achieved while the man remains a civilian. Until he is inducted the administrative process has not been exhausted. Until it is, the registrant may not challenge validity of the local board's order in court.

This view finds support in the *Billings* decision. For, while the Court, in meeting the argument that Billings became a soldier when he was found acceptable, distinguished between the induction process and the procedure by which a selectee's acceptability to the armed forces is ascertained (321 U. S. at pp. 553–554), it pointed out in discussing the selective service process (at pp. 547–548) that:

> * * * the mobilization program established by the Selective Service System is designed to operate "as one continuous process for the selection of men for national service"—a process in which the civil and military agencies perform integrated functions. *The examination of men at induction centers and their acceptance or rejection are parts of that process. Induction marks its end.* [Emphasis added.]

We perceive no sound reason in support of petitioner's contention that the determination of acceptability marks the end of the process. As we have shown, to draw the line at that point is to say that the process was at an end before the

objective of the Selective Training and Service Act has been achieved. Apart from the fact that the registrant then knows that he will be accepted for service, no greater reason appears for drawing the line at this point than at some earlier stage in the proceedings, such as when the induction order is issued. In so far as the Selective Service System is concerned, its function is frustrated in both situations.

Since we agree with the Court, that induction marks the end of the selective service process, we think it follows that in principle this case is indistinguishable from the *Falbo* case and that the doctrine of that case should be applied here.

C. We do not rest alone, however, on the technical legal considerations involved in determining when the mobilization process comes to an end. The same vital practical considerations which underlie the *Falbo* decision are present here. If the registrant may collaterally attack his selective service classification in the criminal trial the armed forces are deprived of the services of many of those registrants who believe themselves wrongly classified and the doors of the prisons are opened for them. At the risk that he may be mistaken and eventually be convicted as a felon, the registrant is encouraged to defy his induction order for the purpose of testing the propriety of his classification in the courts. Experience in enforcing the act has demonstrated time and again that registrants have refused to comply with orders to

report for induction because they mistakenly believed that that was the method for obtaining judicial review. And it suggests that if it generally had been believed that such review was available in a criminal trial, defiance of the induction order would have been resorted to by many registrants who, instead, complied with the induction order and thereafter resorted to habeas corpus.

That the criminal trial is not an adequate forum for reviewing the selective service action is best demonstrated by contrasting the consequences of petitioner's position with those of our view that the selectee must first obey the induction order and then seek judicial review in habeas corpus. A selectee who in compliance with the induction order submits to induction may, on the same day, initiate a habeas corpus proceeding for the purpose of testing the propriety of the selective service classification. Within a matter of days (see 28 U. S. C. 454–461) the writ will have issued, the respondent will have made a return showing by what authority he exercises jurisdiction over the petitioner, and an inquiry will have been had to determine the facts of the case. On the other hand, a selectee who seeks judicial review in the criminal trial must first knowingly defy the induction order. It then devolves upon the Government to seek out the defaulting selectee and institute criminal proceedings against him. This involves referring the case to the United States Attorney who in turn is obliged to refer the matter

to the Federal Bureau of Investigation with directions to apprehend the defaulting registrant. In those cases in which the selectee remains undiscovered by the F. B. I., and there are such cases,[14] he completely avoids his responsibilities under the Act. In those cases where he is eventually apprehended the selectee has avoided performing his obligations under the Act during the entire period leading to his apprehension. The arrest is only the beginning. It still remains for the Government to present the matter to a grand jury and secure an indictment and then to bring the case to trial, both of which steps are time consuming, especially in rural districts. In contrast with the expeditious hearing in the habeas corpus court the criminal trial necessarily involves issues other than the legality of the administrative action and it often affords opportunity for further delay. Even more important than the time consuming delays occasioned by a criminal proceeding, if the defendant in the criminal trial fails to establish the illegality of his induction order[15] he is lost to

[14] The Department's records show that as of June 30, 1945, there were 18,450 selective service cases under investigation by the F. B. I. According to the records of the Selective Service System on May 31, 1945, there were 17,372 delinquents whose cases were pending and undisposed of. Of these, 5,523 had been pending for less than six months, 2,025 for from six months to one year, 4,231 for from one year to two years, 2,697 for from two years to three years, and 2,916 for over three years.

[15] Experience during the course of the war demonstrates that the vast majority of registrants who believe that they were illegally classified are mistaken. For example, the De-

the armed forces. For instead of performing military services as was his duty under the Act he is convicted as a felon and is sent to prison. The habeas corpus proceeding, of course, involves no such disastrous consequences. If the registrant is successful in his challenge to the administrative order, he is immediately discharged from military custody and the task of proper classification may be resumed with little time having been lost. On the other hand if he fails to sustain his contention, he is remanded to his commanding officer and immediately is in a position to undertake the performance of his duty.

That habeas corpus is not an illusory remedy as petitioner seems to think is evident from its long history as a judicial process for inquiring into the lawfulness of the exercise of military jurisdiction over the individual. The courts have uniformly indicated in cases arising out of the Civil War Draft Act (see e. g., *Stingle's Case*, Fed. Cas. No. 13458 (E. D. Pa.)) and the 1917 act (*Arbitman* v. *Woodside*, 258 Fed. 441 (C. C. A. 4); *Ex parte Hutflis*, 245 Fed. 798 (W. D. N. Y.); *United States* v. *Rauch*, 253 Fed. 814 (S. D. N. Y.), that habeas corpus is an appropriate remedy to test the validity of the actions of the draft boards. In the present war, habeas corpus

partment's records reveal that of 200 habeas corpus actions seeking to test the propriety of the selective service classification, which have proceeded to a final judgment during the period from October 16, 1940, to July 1, 1945, the petitioners were unsuccessful in 183 cases.

generally has been recognized as the exclusive remedy for inquiring into the legality of the draft board's action. See, e. g., *Biron* v. *Collins*, 145 F. 2d 758 (C. C. A. 5); *Fujii* v. *United States*, 148 F. 2d 298 (C. C. A. 10), certiorari denied *sub nom. Tamesa* v. *United States*, May 28, 1945; *United States* v. *Estep*, *supra*;[16] *Gibson* v. *United States*, 149 F. 2d 751 (C. C. A. 8), pending upon petition for a writ of certiorari; Connor and Clarke, *Judicial Investigation of Selective Service Action*, 19 Tulane L. Rev. 344. And many registrants who have sought judicial review have resorted to the writ of habeas corpus for a full judicial inquiry into the legality of their classifications (see e. g., *Cramer* v. *France*, 148 F. 2d 801 (C. C. A. 9); *United States ex rel. Phillips* v. *Downer*, 135 F. 2d 521 (C. C. A. 2); *United States ex rel. Trainin* v. *Cain*, 144 F. 2d 944 (C. C. A. 2), certiorari denied, 323 U. S. 795; *Ex parte Stanziale*, 138 F. 2d 312 (C. C. A. 3), cer-

[16] We are unable to agree with the dissenting opinion of Judge Biggs that a registrant who submits to induction has voluntarily submitted to military jurisdiction and, therefore, may not resort to habeas corpus to test the legality of his local board's action. As this Court pointed out in the *Billings* decision (321 U. S. at p. 556) a selectee is not a volunteer; he acts under compulsion of the Selective Training and Service Act. As long as he acts seasonably to inquire into the legality of the selective service action (cf. *Hobbs* v. *Catovolo*, 145 F. 2d 866 (C. C. A. 5) and *Mayborn* v. *Heflebower*, 145 F. 2d 864 (C. C. A. 5), certiorari denied in both cases, April 30, 1945, we agree with the unanimous opinion of the courts that habeas corpus is an appropriate remedy to test the legality of the selective service action.

tiorari denied *sub nom. Stanziale* v. *Paullin,* 320 U. S. 797; *Harris* v. *Ross,* 146 F. 2d 355 (C. C. A. 5); *Benesch* v. *Underwood,* 132 F. 2d 430 (C. C. A. 6)), as well as into other questions affecting the legality of the local board's order. See, e. g., *United States ex rel. Beye* v. *Downer,* 143 F. 2d 125 (C. C. A. 2); *United States ex rel. La Charity* v. *Commanding Officer United States Army Induction Center,* 142 F. 2d 381 (C. C. A. 2); *United States ex rel. Reel* v. *Badt,* 141 F. 2d 845 (C. C. A. 2); *United States ex rel. Lynn* v. *Downer,* 140 F. 2d 397 (C. C. A. 2), certiorari denied, 322 U. S. 756; *United States ex rel. Brandon* v. *Downer,* 139 F. 2d 761 (C. C. A. 2); *Ex parte Green,* 123 F. 2d 862 (C. C. A. 2), certiorari denied, 316 U. S. 668; *United States ex rel. Zucker* v. *Osborne,* 147 F. 2d 135 (C. C. A. 2), certiorari denied, June 18, 1945; *United States ex rel. Bayly* v. *Reckord,* 51 F. Supp. 507 (D. Md.), *United States ex rel. Cascone* v. *Smith,* 48 F. Supp. 842 (D. Mass.).

Apart from experience in other cases, petitioner's experience in this case strikingly demonstrates that habeas corpus is not an illusory remedy and that it is free from the disadvantages arising from judicial review in a criminal trial. As we have shown in the Statement, *supra,* pp. 7–8, when the Army undertook to exercise jurisdiction over him petitioner instituted a habeas corpus action to test the propriety of his selective service classi-

fication and the legality of his induction. He had a prompt hearing before the habeas corpus court, the same court in which he was later prosecuted criminally, and he was accorded full opportunity to establish his contentions. Within three months after petitioner was placed on active duty in the Army, the habeas corpus court had entered findings (53 F. Supp. 582) and within a total of six months the mandate of the circuit court of appeals was executed (see *infra*, pp. 93–94). The consequence of petitioner's position that he should be free to test the propriety of his classification in his criminal trial is clearly shown by contrasting this case with the habeas corpus case. Today, more than two years after petitioner was required to submit to induction, he is still litigating the question of his "duty" to comply with the order of his local board.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the circuit court of appeals should be affirmed.

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APPENDIX A

Statutory Provisions Involved

The Selective Training and Service Act of 1940 as amended (Acts of September 16, 1940, c. 720, 54 Stat. 885; August 18, 1941, c. 362, 55 Stat. 626; December 20, 1941, c. 602, 55 Stat. 844; November 13, 1942, c. 638, 56 Stat. 1018, 50 U. S. C. Appendix 301–318) provided, in part, as follows:

> Sec. 1. (a) The Congress hereby declares that it is imperative to increase and train the personnel of the armed forces of the United States.
>
> (b) The Congress further declares that in a free society the obligations and privileges of military training and service should be shared generally in accordance with a fair and just system of selective compulsory military training and service.
>
> * * * * *
>
> Sec. 3. (a) Except as otherwise provided in this Act, every male citizen of the United States * * * who is between the ages of eighteen and forty-five at the time fixed for his registration, shall be liable for training and service in the land or naval forces of the United States: * * * The President is authorized from time to time, whether or not a state of war exists, to select and induct into the land and naval forces of the United States for training and service, in the manner provided in this Act, such number of men as in his judgment

is required for such forces in the national interest: * * *

SEC. 5. * * *

(d) Regular or duly ordained ministers of religion, and students who are preparing for the ministry in theological or divinity schools recognized as such for more than one year prior to the date of enactment of this Act, shall be exempt from training and service (but not from registration) under this Act.

* * * * * *

SEC. 10 (a). The President is authorized—

(1) to prescribe the necessary rules and regulations to carry out the provisions of this Act;

(2) to create and establish a Selective Service System, and shall provide for the classification of registrants and of persons who volunteer for induction under this Act on the basis of availability for training and service, and shall establish within the Selective Service System civilian local boards and such other civilian agencies, including appeal boards and agencies of appeal, as may be necessary to carry out the provisions of this Act. There shall be created one or more local boards in each county or political subdivision corresponding thereto of each State, Territory, and the District of Columbia. Each local board shall consist of three or more members to be appointed by the President, from recommendations made by the respective Governors or comparable executive officials. No member of any such local board shall be a member of the land or naval forces of the United States, but each member of any such local board shall be a civilian who is a citizen of the United

States residing in the county or political subdivision corresponding thereto in which such local board has jurisdiction under rules and regulations prescribed by the President. Such local boards, under rules and regulations prescribed by the President, shall have power within their respective jurisdictions to hear and determine, subject to the right of appeal to the appeal boards herein authorized, all questions or claims with respect to inclusion for, or exemption or deferment from, training and service under this Act of all individuals within the jurisdiction of such local boards. The decisions of such local boards shall be final except where an appeal is authorized in accordance with such rules and regulations as the President may prescribe.

* * * * *

SEC. 11. Any person charged as herein provided with the duty of carrying out any of the provisions of this Act, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said Act, rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate as to the fitness or unfitness or liability or nonliability of himself or any other person for service under the provisions of this Act, or rules, regulations, or directions made pursuant thereto, or who otherwise

evades registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act, or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act, or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto, or conspire to do so, shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. No person shall be tried by any military or naval court martial in any case arising under this Act unless such person has been actually inducted for the training and service prescribed under this Act or unless he is subject to trial by court martial under laws in force prior to the enactment of this Act. Precedence shall be given by courts to the trial of cases arising under this Act.

* * * * * *

APPENDIX B

SELECTIVE SERVICE REGULATIONS

605.51 *Forms made part of regulations.*—All forms and revisions thereof referred to in these or any new or additional regulations, or in any amendment to these or such new or additional regulations, whether heretofore or hereafter adopted, and all forms and revisions thereof heretofore or hereafter prescribed by the Director of Selective Service shall be and become a part of these regulations in the same manner as if each form, each provision therein, and each revision thereof were set forth herein in full. Whenever in any form or the instructions printed thereon, whether heretofore or hereafter adopted or prescribed, any person shall be instructed or required to perform any act in connection therewith, such person is hereby charged with the duty of promptly and completely complying with such instruction or requirement.

* * * * *

621.1 *Mailing questionnaires.*—(a) The local board shall mail a Selective Service Questionnaire (Form 40) to each registrant in strict accordance with the order numbers, from the smallest to the largest. Selective Service Questionnaires (Form 40) shall be mailed as rapidly as possible, consistant with the ability of the local board to give them prompt consideration upon their return.

* * * * *

621.4 *Claims for, or information relating to, deferment.*—(a) The registrant shall be entitled to present all written information which he believes to be necessary to assist the local board in determining his proper classification. Such information should be included in or attached to the Selective Service Questionnaire (Form 40) and may include any documents, affidavits, or depositions. The affidavits and depositions shall be as concise and brief as possible.

* * * * *

622.11 *Class I–A: Available for military service.*—In Class I–A shall be placed every registrant who, upon classification, has not been placed in Class I–C, Class IV–E, Class I–A–O, or in a deferred class.

* * * * *

622.44 *Class IV–D: Minister of religion or divinity student.*—(a) In Class IV–D shall be placed any registrant who is a regular or duly ordained minister of religion or who is a student preparing for the ministry in a theological or divinity school which has been recognized as such for more than 1 year prior to the date of enactment of the Selective Training and Service Act (September 16, 1940).

(b) A "regular minister of religion" is a man who customarily preaches and teaches the principles of religion of a recognized church, religious sect, or religious organization of which he is a member, without having been formally ordained as a minister of religion; and who is recognized by such church, sect, or organization as a minister.

(c) A "duly ordained minister of religion" is a

man who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect, or religious organization, to teach and preach its doctrines and to administer its rites and ceremonies in public worship; and who customarily performs those duties.

* * * * * *

623.1 *General principles of classification.*—(a) Each registrant shall be classified as soon as practicable after his Selective Service Questionnaire (Form 40) is received by the local board. * * *

(b) It is the local board's responsibility to decide in the first instance the class in which each registrant shall be placed.

(c) In classifying a registrant there shall be no discrimination for or against him because of his race, creed, or color, or because of his membership or activity in any labor, political, religious, or other organization. Each registrant shall receive equal and fair justice.

623.2 *Information considered for classification.*—The registrant's classification shall be made solely on the basis of the Selective Service Questionnaire (Form 40), Affidavit of Dependent Over 18 Years of Age (Form 40A), Affidavit—Occupational Classification (General) (Form 42), or Affidavit—Occupational Classification (Industrial) (Form 42A), and such other written information as may be contained in his file * * *. Oral information should not be considered unless it is summarized in writing and the summary placed in the registrant's file. Under no circumstances should the local board rely upon information received by a member personally unless such infor-

mation is reduced to writing and placed in the registrant's file.

* * * * *

623.21 *Consideration of classes not requiring physical examination.*—(a) Upon undertaking to classify any registrant, it should first be determined whether he should be classified in Class I–C. If the registrant is not classified in Class I–C, it should next be determined whether he should be classified in Class IV–A.

(b) If the registrant is not classified in Class I–C or Class IV–A under paragraph (a) of this section, the local board shall next determine whether he should be classified in Class IV–C on the ground that he is a neutral alien who has filed DSS Form 301 or on the ground that there is no possibility of his being accepted for training and service because of his nationality or ancestry. Otherwise no consideration will be given to Class IV–C at this time.

(c) If the registrant is not classified in Class I–C or Class IV–A under paragraph (a) of this section and is not classified in Class IV–C under paragraph (b) of this section, consideration shall next be given to the following classes in the order listed, and the registrant shall be classified in the first class for which grounds are established:

Class IV–D
Class IV–B
Class III–C
Class III–A
Class II–C
Class II–B
Class II–A

(d) If the registrant is not classified in one of the classes set forth in paragraph (a), (b), or (c) of this section, and, under the provisions of section 622.61, he is completely disqualified morally and there is no possibility that a waiver of such moral disqualification can be secured, he shall be classified in Class IV-F (moral). Otherwise no consideration will be given to Class IV-F at this time.

(e) If the registrant is not classified in one of the classes set forth in paragraphs (a), (b), (c), or (d) of this section, consideration shall next be given to whether he qualifies for classification in Class III-D.

* * * * *

623.31 *Notice to registrant to appear for physical examination.*—(a) If a registrant has not been placed in one of the classes set forth in section 623.21 the local board, as soon as practicable after the determination of that fact, shall mail to him a Notice to Registrant to Appear for Physical Examination (Form 201). This notice shall fix the date, time, and place for the registrant to report for such physical examination, normally 5 days after the date of mailing of such notice.

(b) On the day and at the time and place fixed in the Notice to Registrant to Appear for Physical Examination (Form 201), the registrant shall appear before the examining physician and submit to physical examination.

* * * * *

623.33 *Physical examination by examining physician.*—(a) The Director of Selective Serv-

ice, from time to time, will issue a List of Defects (Form 220), which will set forth defects which manifestly disqualify the registrant for military service.

(b) A registrant shall personally appear before the examining physician and shall be examined in the manner provided in paragraph (c) of this section except when the examining physician or the local board is convinced that the appearance of the registrant for physical examination before the examining physician will be injurious to the registrant's health or the health of those who might be brought in contact with him. When the registrant appears before the examining physician, his physical examination should be held in a well-lighted, well-heated place. It should be held while the registrant is in the nude.

(c) The physical examination should consist of observing the registrant while walking toward, standing before, and walking away from the examining physician. The registrant may be required to go through calisthenics to determine the mobility of joints or to furnish a basis for determination of his alertness, intelligence, understanding of commands, postural tensions, tendencies to incoordination, and tremors. If peculiarities are noted, simple questions should be asked in an effort to bring out replies bearing on the mental health and personality characteristics of the registrant. The examining dentist, or if he is not available, the examining physician, will examine the mouth of the registrant. The examining physician will take blood from the registrant for a serological test. The blood spec-

imen will be collected in a container furnished by the State health officer and will be forwarded to the State laboratory or other laboratory designated by the State Director of Selective Service, together with the accomplished form prescribed within the State for such purpose. If the report on the first serological test of the registrant is other than truly negative, the examining physician shall take additional blood for further serological tests until he is satisfied that the blood is truly negative, truly doubtful, or truly positive. Additional blood for further serological tests will not be taken if distance or circumstances over which the local board or the registrant has no control make it impracticable for additional tests to be taken. Serological tests will be accomplished without expense to the Selective Service System, unless such expense is specifically authorized by the Director of Selective Service. No other laboratory procedures will be undertaken as a part of this physical examination.

* * * * *

(g) The examining physician shall enter in Item 24 on the Report of Physical Examination and Induction (Form 221) the result of the serological tests as "Truly Negative," "Truly Doubtful," or "Truly Positive."

(h) The examining physician will enter in Item 25 on the Report of Physical Examination and Induction (Form 221) any pertinent remarks which he deems advisable for the benefit of the examiners at the induction station.

(i) The examining physician, in Item 26 on the Report of Physical Examination and Induction

(Form 221), shall complete the answer to the following question:

> Do you find that the above-named registrant has any of the defects set forth in the List of Defects (Form 220)?

If the examining physician's answer is "Yes," he shall describe the defects in order of their significance. If the examining physician entertains a doubt as to whether he should answer "Yes" or "No," his answer shall be "No." No other information should be included under Item 26.

* * * * *

623.51 *Procedure for classification after physical examination.*—(a) After physical examination, the report of the examining physician shall be considered, and the registrant shall be classified in the manner hereinafter provided.

(b) If the registrant is found to have a defect set forth in the List of Defects (Form 220) as manifestly disqualifying him for military service, he shall be classified in Class IV–F.

(c) If the registrant has made a claim that he is a conscientious objector and if such registrant has not been classified in Class IV–F as provided in (b) above, it shall be determined whether such registrant, by reason of religious training and belief, is conscientiously opposed to participation in war in any form, and, if he is, whether he is conscientiously opposed to both combatant and noncombatant military service or is opposed to combatant military service only. When this determination has been made, classification will continue in the manner hereinafter provided.

(d) Deleted.

(e) If the registrant has not been classified in Class IV–F in the manner provided in paragraph (b) of this section, he shall be classified in Class I–A; provided that: (1) If such registrant has been found to be a conscientious objector to combatant military service but not a conscientious objector to noncombatant military service, he shall be classified in Class I–A–O; or (2) if such registrant has been found to be a conscientious objector to both combatant and noncombatant military service, he shall be classified in Class IV–E.

* * * * * *

623.61 *Classification and change of Classification.*—(a) As soon as practicable after the local board has classified or changed the classification of a registrant, it shall mail a notice thereof on a Notice of Classification (Form 57) to the registrant. (The date on which the deferment of the registrant terminates will be shown if he is classified in Class II–A or Class II–B.) At the same time, it shall mail a Classification Advice (Form 59) to the following:

(1) Every person whose signed Affidavit—Occupational Classification (General) (Form 42) or Affidavit—Occupational Classification (Industrial) (Form 42A) is on file in the registrant's Cover Sheet (Form 53);

(2) Every person whose signed Affidavit of Dependent Over 18 Years of Age (Form 40A) is on file in the registrant's Cover Sheet (Form 53); and

(3) Any other person authorized to request the reopening of the registrant's classification under the provisions of section 626.2 and whose

request that the registrant's classification be reopened is on file in the registrant's Cover Sheet (Form 53).

(b) After each local board meeting, a copy of the Local Board Action Report (Form 110), listing the registrants who have been classified or whose classification has been changed, shall be posted and kept permanently posted in a conspicuous place in the office of the local board. A copy shall also be sent to the government appeal agent. When a person is unable to ascertain the current classification of a registrant from the posted copy of the Local Board Action Report (Form 110), an employee of the local board, upon request, shall consult the Classification Record (Form 100) and furnish to the person making inquiry the current classification of such registrant.

(c) When the local board classifies or changes the classification of a registrant, it shall record such classification on the Selective Service Questionnaire (Form 40) and the Classification Record (Form 100). Such classification shall also be entered in Section II on the Report of Physical Examination and Induction (Form 221) when the registrant is classified following physical examination by the examining physician or when such physical examination has been waived. If the registrant has been denied a claim for a classification in Class I-A-O or Class IV-E, the local board shall enter on each copy of the Report of Physical Examination and Induction (Form 221) opposite Item 27 (a), a statement to that effect.

(d) When the Notice of Classification (Form 57) or Classification Advice (Form 59) is mailed, the date of mailing such notice shall be entered on the Classification Record (Form 100), and, in addition, the date of mailing such notice or advice and the persons to whom they are mailed shall be entered on the Selective Service Questionnaire (Form 40).

* * * * *

625.1 *Opportunity to appear in person.*—(a) Every registrant, after his classification is determined by the local board (except a classification which is itself determined upon an appearance before the local board under the provisions of this part), shall have an opportunity to appear in person before the member or members of the local board designated for the purpose if he files a written request therefor within 10 days after the local board has mailed a Notice of Classification (Form 57) to him. Such 10-day period may not be extended, except when the local board finds that the registrant was unable to file such request within such period because of circumstances over which he had no control.

(b) No person other than the registrant may request an opportunity to appear in person before the local board.

* * * * *

625.2 *Appearance before local board.*—(a) At the time and place fixed by the local board, the registrant may appear in person before the member or members of the local board designated for the purpose. The fact that he does appear shall be entered in the proper place on the Classi-

fication Record (Form 100). If the registrant does not speak English adequately, he may appear with a person to act as interpreter for him. No registrant may be represented before the local board by an attorney.

(b) At any such appearance, the registrant may discuss his classification, may point out the class or classes in which he thinks he should have been placed, and may direct attention to any information in his file which he believes the local board has overlooked or to which he believes it has not given sufficient weight. The registrant may present such further information as he believes will assist the local board in determining his proper classification. Such information shall be in writing or, if oral, shall be summarized in writing and, in either event, shall be placed in the registrant's file. The information furnished should be as concise as possible under the circumstances. The member or members of the local board before whom the registrant appears may impose such limitations upon the time which the registrant may have for his appearance as they deem necessary.

(c) After the registrant has appeared before the member or members of the local board designated for the purpose, the local board shall consider the new information which it receives and shall again classify the registrant in the same manner as if he had never before been classified, provided that if he has been physically examined by the examining physician, the Report of Physical Examination and Induction (Form 221) already in his file shall be used in case his physi-

cal or mental condition must be determined in order to complete his classification.

(d) After the registrant has appeared before the member or members of the local board designated for the purpose, the local board, as soon as practicable after it again classifies the registrant, shall mail notice thereof on the Notice of Classification (Form 57) to the registrant and on Classification Advice (Form 59) to the persons entitled to receive such notice or advice on an original classification under the provisions of section 623.61.

(e) Each such classification shall be followed by the same right of appeal as in the case of an original classification.

625.3 *Induction stayed.* A registrant shall not be inducted during the period afforded him to appear in person before a member or members of his local board, and if the registrant requests a personal appearance, he shall not be inducted until 10 days after the Notice of Classification (Form 57) is mailed to him by the local board, as provided in paragraph (d) of section 625.2.

* * * * *

626.1 *Classification not permanent.*—(a) No classification is permanent.

(b) Each classified registrant shall, within 10 days after it occurs, and any other person should, within 10 days after knowledge thereof, report to the local board in writing any fact that might result in such registrant being placed in a different classification.

(c) The local board shall keep informed of the status of classified registrants. Registrants may

be questioned or physically or mentally reexamined, employers may be required to furnish information, police officials or other agencies may be requested to make investigations, and other steps may be taken by the local board to keep currently informed concerning the status of classified registrants.

626.2 *When registrant's classification may be reopened and considered anew.*—(a) The local board may reopen and consider anew the classification of a registrant (1) upon the written request of the registrant, the government appeal agent, any person who claims to be a dependent of the registrant, or any interested party in a case involving occupational deferment, if such request is accompanied by written information presenting facts not considered when the registrant was classified, which, if true, would justify a change in the registrant's classification; or (2) upon its own motion if such action is based upon facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; provided, in either event, the classification of a registrant shall not be reopened after the local board has mailed to such registrant an Order to Report for Induction (Form 150) unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control.

(b) At any time before the induction of a registrant, the local board shall reopen and consider anew such registrant's classification upon the writ-

ten request of the State Director of Selective Service or the Director of Selective Service.

* * * * *

627.1 *Who may appeal any determination of a local board to a board of appeal at any time.*—(a) Either the State Director of Selective Service or the Director of Selective Service may appeal from any determination of a local board.

(b) Either the State Director of Selective Service or the Director of Selective Service may take such an appeal at any time.

627.2 *Who may appeal registrant's classification to board of appeal under certain circumstances.*—(a) The registrant, any person who claims to be a dependent of a registrant, any person was has filed written evidence of the occupational necessity of a registrant, or the government appeal agent may appeal to a board of appeal from any classification of a registrant by the local board except that no such person may appeal from the determination of the registrant's physical or mental condition by the examining physician, the examining station of the armed forces, or the local board.

(b) The government appeal agent may take any appeal authorized under paragraph (a) of this section at any time within 10 days after the date when the local board mails to the registrant a Notice of Classification (Form 57) or at any time before the registrant is mailed an Order to Report for Induction (Form 150).

(c) The registrant, any person who claims to be a dependent of the registrant, or any person who has filed written evidence of the occupational

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necessity of the registrant may take an appeal authorized under paragraph (a) above at any time within 10 days after the date when the local board mails to the registrant a Notice of Classification (Form 57). At any time prior to the date that the local board mails to the registrant an Order to Report for Induction (Form 150), the local board may permit any such person to appeal, even though such 10-day period has elapsed, if it is satisfied that the failure of such person to appeal within the 10-day period was due to a lack of understanding of the right to appeal or to some cause beyond the control of such person. Unless the local board thereafter permits an appeal, the right of such persons to appeal shall expire at the end of the 10-day period. If such an extension of time to appeal is granted by the local board, a record thereof shall be entered on the Selective Service Questionnaire (Form 40) under the heading "Minutes of Other Actions."

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627.11 *How appeal to board of appeal is taken.*—(a) Any person entitled to do so may appeal in either of the following ways:

(1) By filing with the local board a written notice of appeal. Such notice need not be in any particular form but must state the name of the registrant and the name and identity of the person appealing so as to show the right of appeal.

(2) By signing the "Appeal to Board of Appeal" on the Selective Service Questionnaire (Form 40).

627.12 *Statement of person appealing.*—The person appealing may attach to his notice of ap-

peal or to the Selective Service Questionnaire (Form 40) a statement specifying the respects in which he believes the local board erred, may direct attention to any information in the registrant's file which he believes the local board has failed to consider or give sufficient weight, and may set out in full any information which was offered to the local board and which the local board failed or refused to include in the registrant's file.

627.13 *Local board to transmit record to the board of appeal.*—(a) Immediately upon an appeal being taken to the board of appeal, the local board shall carefully check the registrant's file to make certain that all steps required by the regulations have been taken and the record is complete. If any facts considered by the local board do not appear in the written information in the file, the local board shall prepare and place in the file a written summary of such facts. In preparing such a summary the local board should be careful to avoid the expression of any opinion concerning information in the registrant's file and should refrain from including any argument in support of its decision.

(b) Immediately upon determining that all steps required by the regulations have been taken and that the record is complete, the local board shall transmit the file to the board of appeal, provided that the State Director of Selective Service may direct the channels through which such file shall be forwarded to the board of appeal.

* * * * *

627.23 *Preliminary review.*—The board of appeal will carefully check each file to determine

whether all steps required by the reguations have been taken, whether the record is complete, and whether the information in the file is sufficient to enable it to determine the registrant's classification. If any steps have been omitted by the local board, if the record is incomplete, or if the information is not sufficient to enable the board of appeal to determine the classification of the registrant, the board of appeal shall return the file to the local board with proper instructions. If the board of appeal returns the file to the local board, it shall enter the date of the return in column 4 of the Docket Book of Board of Appeal (Form 102).

627.24 *Review by board of appeal.*—(a) The board of appeal shall consider appeals in the order in which they are received.

(b) In reviewing the appeal, no information shall be considered which is not contained in the record received from the local board and the decision of the board of appeal shall be based solely thereon.

* * * * *

627.26 *Decision of board of appeal.*—(a) The board of appeal shall classify the registrant, giving consideration to each class in the order in which the local board gives consideration thereto when it classifies a registrant. (*See* part 623.)

(b) Such classification of the registrant shall be final, except where an appeal to the President is taken; provided, however, that this shall not be construed as prohibiting a local board from changing the classification of a registrant in a proper case under the provisions of part 626.

627.27 *Record of decision on appeal.*—When the board of appeal makes its classification, it shall record its decision, showing the yes and no vote, upon the Selective Service Questionnaire (Form 40) and in the Docket Book of Board of Appeal (Form 102), shall mark the case "Closed" in the "Remarks" column of the Docket Book of Board of Appeal (Form 102), and shall immediately return the record to the local board, provided that the State Director of Selective Service may direct the channels through which the record shall be returned to the local board.

* * * * *

627.31 *Procedure of local board when appeal to the board of appeal is returned.* When the file of a registrant is received by the local board, it shall:

(1) Mail a Notice of Classification (Form 57) to the registrant and a Classification Advice (Form 59) to the government appeal agent; to every person whose signed Affidavit—Occupational Classification (General) (Form 42), Affidavit—Occupational Classification (Industrial) (Form 42A), or Affidavit of Dependent Over 18 Years of Age (Form 40A) is on file in the registrant's Cover Sheet (Form 53); and to the person who made the appeal, if other than any of the foregoing.

(2) If one or more members of the board of appeal dissented from the determination of that board, indicate on such notice the numerical division of the board of appeal.

(3) Enter on the Classification Record (Form 100) the date of mailing such notice and advice.

(4) If the local board classification of the registrant has been changed by the board of appeal, enter the new classification in the Classification Record (Form 100) and, with red ink, draw a line through the local board classification.

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627.41 *Appeal stays induction.*—A registrant shall not be inducted either during the period afforded him to take an appeal to the board of appeal or during the time such an appeal is pending.

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627.61 *Reconsideration of board of appeal determination.*—(a) When either the Director of Selective Service or the State Director of Selective Service deems it to be in the national interest or necessary to avoid an injustice, he may, at any time, request a board of appeal to reconsider any determination made by it, stating his reasons for requesting such reconsideration. Upon receiving such a request, a board of appeal will reconsider its determination in any case.

(b) At any time within 10 days after the date when the local board mails to the registrant a Notice of Classification (Form 57), as provided in section 627.31, or at any time before the registrant is mailed an Order to Report for Induction (Form 150), the government appeal agent, if he deems it to be in the national interest or necessary to avoid an injustice, may prepare and place in the registrant's file a recommendation that the State Director of Selective Service either request the board of appeal to reconsider its determination or appeal to the President. The reg-

istrant's file shall then be forwarded to the State Director of Selective Service. As soon as the State Director of Selective Service has acted upon the government appeal agent's request he shall advise the local board and, if he determines neither to request the board of appeal to reconsider its determination nor to appeal to the President, he shall return the file to the local board.

* * * * *

628.1 *Who may appeal to the President from any determination of a board of appeal.*—(a) When either the State Director of Selective Service or the Director of Selective Service deems it to be in the national interest or necessary to avoid an injustice, he may appeal to the President from any determination of a board of appeal. He may take such an appeal at any time.

(b) An appeal to the President may be taken by the Director of Selective Service (1) by mailing to the local board, through the State Director of Selective Service, a written notice of appeal or (2) by placing in the registrant's file a written notice of appeal and, through the State Director of Selective Service, advising the local board thereof.

(c) An appeal to the President may be taken by the State Director of Selective Service (1) by mailing to the local board a written notice of appeal and directing the local board to forward the registrant's file to him for transmittal to the Director of Selective Service or (2) by placing in the registrant's file a written notice of appeal and advising the local board thereof. Before he forwards the registrant's file to the Director of

Selective Service, the State Director of Selective Service shall place in such file a written statement of his reasons for taking such appeal.

* * * * *

628.2 *Appeal to the President.*—The registrant or any person who claims to be a dependent of the registrant or any person who has filed written information as to the occupational status of the registrant, at any time within 10 days after the mailing by the local board of the Notice of Classification (Form 57), notifying the registrant that the local board classification has been affirmed or changed, may appeal to the President provided the registrant was classified by the board of appeal in either Class I–A, Class I–A–O, or Class IV–E and one or more members of the board of appeal dissented from such classification. The local board may permit any person who is entitled to appeal to the President under this section to do so, even though the 10-day period herein provided for such an appeal has elapsed, if it is satisfied that the failure of such person to appeal within such 10-day period was due to a lack of understanding of the right to appeal or to some cause beyond the control of such person. Unless the local board permits such an appeal, the right of such persons to appeal to the President shall terminate at the end of the 10-day period herein provided.

* * * * *

628.4 *Procedure on appeal to the President.*—(a) When an appeal to the President is taken, the local board shall (1) notify the registrant that such an appeal has been taken, unless he is the

person who took the appeal; (2) if the registrant's file is in its possession, forward the entire file to the State Director of Selective Service; and (3) enter on the Classification Record (Form 100) the date the file is forwarded or the date it receives notice that an appeal has been taken. The local board shall not place in the file any statement or expression of opinion concerning the information in the registrant's file or the reasons for its decision.

* * * * *

628.6 *Procedure of local board when appeal to the President is returned.* When the file of the registrant is received by the local board, it shall:

(1) Mail a Notice of Classification (Form 57) to the registrant and a Classification Advice (Form 59) to the person making the appeal, if other than the registrant;

(2) Enter in the Classification Record (Form 100) the date of the mailing of such notice and advice; and

(3) If the classification of the registrant by the board of appeal has been changed, enter the new classification in the Classification Record (Form 100) and, with red ink, draw a line through the board of appeal classification.

628.7 *Appeal to the President stays induction.*—(a) When a registrant is classified by the board of appeal and one or more members of the board of appeal dissent from such classification, the registrant shall not be inducted during the period afforded him to take an appeal to the President.

(b) A registrant shall not be inducted during the time an appeal to the President is pending.

* * * * *

633.1 *Order to report for induction (Form 150).*—(a) Immediately upon determining which men are to report for induction, the local board shall prepare for each man an Order to Report for Induction (Form 150), in duplicate. The local board shall mail the original to the registrant and shall file the copy in his Cover Sheet (Form 53).

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633.9 *Induction.*—At the induction station, the selected men found acceptable will be inducted into the land or naval forces.

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633.13 *Classification when man is inducted.*—Upon receiving notice from the induction station that a selected man has been inducted, he shall be placed in Class I–C.

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633.13–2 *Classification of man not accepted.*—(a) Upon receiving notice from the induction station that a selected man has not been accepted because he is disqualified for service in the land or naval forces, the local board shall reopen his classification and classify him in Class IV–F unless he is a man who was honorably discharged from the land or naval forces based on physical or mental disability, in which case the local board shall classify him in Class I–C.

* * * * *

633.21 *Duty of registrant to report for and submit to induction.*—(a) When the local board mails to a registrant an Order to Report for Induction (Form 150), it shall be the duty of the registrant to report for induction at the time and place fixed in such order. If the time when the registrant is ordered to report for induction is postponed, it shall be the continuous duty of the registrant to report for induction upon the termination of such postponement and he shall report for induction at such time and place as may be fixed by the local board. Regardless of the time when or the circumstances under which a registrant fails to report for induction when it is his duty to do so, it shall thereafter be his continuous duty from day to day to report for induction to his local board and to each local board whose area he enters or in whose area he remains.

(b) Upon reporting for induction, it shall be the duty of the registrant: (1) to follow the instructions of a member or clerk of a local board as to the manner in which he shall be transported to the location where his induction will be accomplished, (2) to obey the instructions of the leader or assistant leaders appointed for the group being forwarded for induction, (3) to appear at the place where his induction will be accomplished, (4) to obey the orders of the representatives of the armed forces while at the place where his induction will be accomplished, (5) to submit to induction, and (6) if he is not accepted by the armed forces, to follow the instructions of the representatives of the armed forces as to the manner in which he will be transported on his re-

turn trip to the local board. (As enacted by Amendment No. 207, 9 F. R. 445, effective January 10, 1944.)

633.22 *Forwarding registrants for induction.* When the registrants who are to be forwarded for induction have assembled, the local board shall proceed as follows:

(1) The roll shall be called, using the previously prepared Delivery List (Form 151) and noting any absences thereon in column 3 under Remarks. If any registrant fails to report for delivery, fails to report at the place of induction, is transferred to another local board for delivery, or is rejected, the local board shall not furnish a replacement for such registrant.

(2) A leader and assistant leaders shall be appointed and furnished with proper credentials. Leaders and assistant leaders shall have such authority as is necessary to deliver the group to the place of induction.

(3) The leader shall be given the following:

(A) The original and all copies of the Delivery List (Form 151),

(B) For each registrant being forwarded, the original and both copies of the Report of Physical Examination and Induction (Form 221); the copy of the Certificate of Fitness (Form 218); and other records referred to in subparagraph (2) of paragraph (a) of section 633.3.

(C) When it is necessary, transportation and meal and lodging requests for the group, covering their trip to the place of induction.

The leader shall be instructed to deliver the original and all copies of the Delivery List (Form 151), the originals and all copies of all Reports of Physical Examination and Induction (Form 221), all copies of Certificates of Fitness (Form 218), and all other information concerning the registrants in the group to the Commanding Officer of the Army Reception Center, the Navy Recruiting Station, or the induction station, as the case may be, or to his representative.

(4) The local board shall instruct all registrants in the group that it is their duty to obey the instructions of the leader or assistant leaders during the time they are going to the place of induction; that they will be met by proper representatives of the armed forces at the place of induction; that while they are at the place of induction, they will be subject to and must obey the orders of the representatives of the armed forces; that they must present themselves for and submit to induction; that if they are rejected, the representatives of the armed forces will, to the extent prescribed by the regulations of the armed forces, provide transportation and subsistence for their return trip. (As enacted by Amendment No. 207, effective January 10, 1944.)

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653.11 *Reception at camps.*—(a) When the assignee has reported to camp, the camp director shall complete the Order to Report for Work of National Importance (Form 50). Four copies of the completed Order to Report for Work of National Importance (Form 50) shall be sent to the Director of Selective Service; one copy will

be retained by the camp director. The Director of Selective Service will forward two copies of the Order to Report for Work of National Importance (Form 50) to the appropriate State Director of Selective Service, who will retain one copy for his files and mail the other copy to the local board for filing in the registrant's Cover Sheet (Form 53).

(b) In the event an assignee does not report to the camp at the time prescribed in his Order to Report for Work of National Importance (Form 50) or pursuant to the instructions of the local board, the camp director will report such fact to the Director of Selective Service.

(c) If the assignee indicates that his physical condition has changed since his final-type physical examination for registrants in Class IV–E, the camp physician shall examine him with reference thereto. If the assignee is not accepted for work of national importance, the camp director will indicate the reason therefor, and the assignee, pending instructions from the Director of Selective Service, will be retained in the camp or hospitalized where necessary.

(d) The camp director shall complete Item 79 of the Report of Physical Examination and Induction (Form 221), changing such parts thereof as may be required. The camp director shall retain the Armed Forces' Original of the Report of Physical Examination and Induction (Form 221) and shall forward the Surgeon General's Copy and the National Headquarters' Copy thereof to the Director of Selective Service.

(e) Upon receiving notice that a registrant has been accepted for work of national importance, the local board shall not change his classification but shall note the fact of his acceptance for such work in the Classification Record (Form 100).

(f) Upon receiving notice that a registrant has been rejected for work of national importance, the local board shall reopen his classification and classifiy him in Class IV–F.

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Army Regulation 615–500, issued September 1, 1942, as amended, provided, in part:

SECTION II

* * * * *

13. *Procedure.* * * *

e. Induction ceremony.

(1) The induction will be performed by an officer who, prior to administering the oath, will give the men about to be inducted a short patriotic talk. The ceremony should take place in a setting, preferably a large room, made colorful by the display of flags with guard and display of suitable pictures, and made as impressive as possible. Wherever practicable, martial music will be provided either by a band or in the form of recorded music. For the benefit of any nondeclarant aliens about to be inducted the induction officer will explain the difference between the oath of allegiance and the oath of service and obedience. The oath, Article of War 109, will then be administered:

I, ----------, do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America;

that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to the Rules and Articles of War.

* * * * * *

(4) They will then be informed that they are now members of the Army of the United States and given an explanation of their obligation and privileges. In the event of refusal to take the oath (or affirmation) of allegiance by a declarant alien or citizen he will not be required to receive it, but will be informed that this action does not alter in any respect his obligation to the United States. In the event a nondeclarant alien refuses to take the oath of allegiance or the oath of service and obedience the following statement will be typed under "remarks—administrative" of the service record:

Read the oath of service and obedience for aliens, upon refusal to swear thereto, and was informed that his refusal to so swear to the oath did not in any way alter his obligation as to service and obedience to the United States.

f. *Selectees disqualified.*—Selectees found disqualified will be instructed to remain for completion of section IV, DSS Form No. 221, and thereupon release to their representative group leader or the selective service representative at the Army physical examination station. No man will be rejected by the Army physical examination board until due consideration has been given to all information contained on DSS Form No. 221.

g. *Disposition of men rejected.*—Men rejected will be informed of the reason for their rejection, and provided with transportation to the location of the local board by whom they were forwarded for examination and induction, together with meal tickets when necessary, except that residents of the Territory of Alaska rejected at induction stations in the Territory of Alaska will be provided with such transportation and subsistence as is necessary to permit return to their homes or to the location of their boards.

* * * * *

16. *Disposition of men accepted.*—a. Inducted men who so desire will be given the opportunity, immediately after induction, to return to their residence to arrange personal, financial, and business affairs. This will be accomplished by release from active service, transfer to the Enlisted Reserve Corps, and subsequent call to active service. Should an inducted man not desire to return to his residence for this purpose, he will be forwarded direct to a reception center.

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APPENDIX C

The decision of the Director of Selective Service acting for the President, on petitioner's appeal to the President from the classification given him by his Board of Appeal is as follows:

Appeal No. 27589

APPEAL TO THE PRESIDENT OF THE UNITED STATES

Under the Provisions of the Selective Service Regulations

State of South Carolina
Board of Appeal No. 1
Local Board No. 68, Richland County
Registrant: Louis Dabney Smith
Order No. 14022
Classification on Appeal to the President:
Class I-A

This, the 23d day of July 1943.
By Authority of the President.

LEWIS B. HERSHEY,
Director.

APPENDIX D

The judgment of the court in *Smith* v. *Richart*, 53 F. Supp. 582, ordering petitioner released from military custody is as follows:

In the United States District Court for the Eastern District of South Carolina, Columbia Division

Order C. A. 1100

LILA SMITH, PETITIONER

v.

D. G. RICHART, AS COLONEL UNITED STATES ARMY AND COMMANDING OFFICER OF FORT JACKSON, RESPONDENT

This case comes on for further proceedings in accordance with the mandate of the United States Circuit Court of Appeals for the Fourth Circuit, reversing the judgment of this Court by agreement of the parties, because the case comes within the rule announced by the United States Supreme Court in its decision filed March 27, 1944, reversing the judgment of the Tenth Circuit Court of Appeals in the case of Arthur Goodwyn Billings v. Karl Truesdell, etc., filed after the judgment of this Court had been rendered on February 1, 1944. Now, therefore, in accordance with the foregoing,

It is ordered and adjudged as follows:

1. That the petition for writ of habeas corpus filed by the petitioner to obtain the release of Louis Dabney Smith, Jr. from

the military stockade at Fort Jackson, South Carolina, be and the same is hereby granted upon the ground that he is not now subject to military law, and the said court martial proceedings against him are therefore null and void for lack of jurisdiction.

2. That the imprisonment and detention of the said Louis Dabney Smith, Jr. by the respondent herein is illegal and without authority of law, and he is hereby ordered to be released and discharged therefrom.

(Signed) C. C. WYCHE,
United States District Judge.

Dated: Spartanburg, S. C., April 29, 1944.

U. S. GOVERNMENT PRINTING OFFICE: 1946